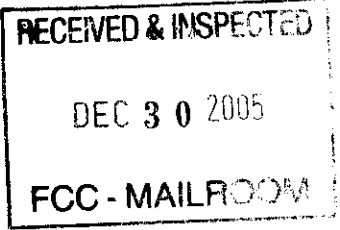


CGB-CC-0154

**THE AGNEW LAW FIRM**

*A Limited Liability Partnership  
Counselors and Attorneys at Law*



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Lubbock, Texas  
79401

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December 29, 2005

Commission's Secretary  
Office of the Secretary  
Federal Communications Commission  
Attention: CGB Room 3-B431  
9300 East Hampton Drive  
Capitol Heights, MD 20743

RE: Petition to Exempt from Closed Captioning for Undue Burden

Dear Sir or Madam,

Our firm has been retained to represent "W Productions" a sole proprietorship in regards to the FCC's closed captioning regulations.

This letter is to serve notice of W Productions' intent to claim an exception to the requirement for the closed captioning of all new programming. W Productions is a Lubbock based company producing television shows of local interest. They are located at 2610 Salem Ave, Lubbock, Texas 79401.

W Productions is the producer of three separate television shows and the owner of one.

"Good Business with Charlie Whisner" once weekly is owned and produced by W Productions. The thirty minute show airs once on KLBK, once on UPN, and then 15 times on Cox Cable on channels 9 and 78, the local programming channels. Each month, two versions of each of the five episodes of the show are produced. Good Business showcases small and locally owned businesses.

"At Home with Westmark" is a thirty minute show that airs once on KLBK and then 34 times per week on the Cox Cable local access channels. Each episode produced has two versions. At Home is a real estate show that features 25-35 homes for sale in the community. W Productions only produces the show and has no involvement after production ends.

The "Coldwell Banker Show" is a thirty minute show airing once on KLBK and then airs 27 times per week on the Cox Cable local access station. It is a real estate show featuring 12-14 homes per week. There are four versions of this show produced. Like At Home, W Productions has no involvement after production ceases.

Each of these programs are placed on the air through the purchase of air time from the individual outlets. No sums are paid to the owners for the airing of the programs. All revenue of W Productions is from production. At Home and Coldwell Banker are fee based. Good Business is compensated for the featuring of the profiled businesses. No revenue is received from the channels airing the programming.

### **Automatic Exemption**

In our opinion, W Productions qualifies for an exemption from the Closed Captioning Requirement under Exception 79.1(d)(11), which provides that no one is required to spend more than 2% of gross revenue to caption programming. This position is made clear in the Order on Reconsideration on Closed Captioning and Video Description of Video Programming Released October 1, 1998, paragraph 22. Since, this exception is self enforcing, we are convinced that there is no need to contact your office with this notice. Nonetheless, this notice is provided out of an abundance of caution.

The financial numbers provided by W Productions indicate that, after obtaining good faith estimates, the cost to close caption each of programs exceeds 2% of gross revenue. The best quote available for the captioning service is \$125.00 per half hour. (After exploring the possibility of purchasing a machine to do their own transcription, it was rejected as infeasible.)

Gross revenue for the production of the Coldwell Banker Show is \$443.00 per episode. Last year it grossed \$23,040.00. The cost to caption each show would be \$125.00 per version, as there are four versions made, costs would exceed \$500.00 per episode. To caption the program would amount to \$26,000.00 per year.

Gross revenue for the production of At Home is \$600.00 per episode. Gross revenue off of this program last year was \$31,200.00. The cost to caption each episode is \$250.00 per episode. Captioning all the shows this year would cost \$13,000.00.

Good Business has yet to finish its first year of production. In the last four months of 2005, it grossed a total of \$23,457.00. The cost to caption the show in each episode would be \$250.00. Captioning all the Good Business shows projected this year would cost \$13,000.00.

Total revenue from all sources from the business amount to \$120,000.00. The projected cost to caption all the programming for the forthcoming year would exceed \$52,000.00. Two percent of last year's gross receipts amounts to only \$2,400.00. W Productions recognizes the need to devote at least \$2,400.00 in the coming year to closed captioning of their programming. However, we believe there is no obligation to caption all programming they produce.

### **Undue Burden**

In addition to our opinion that W Productions qualifies under the applicable safe harbor, we are taking the additional step of filing this petition on the grounds that compliance would be unduly burdensome. In so doing, we are not waiving the above claim but are stating a separate ground of relief. The financial information provided above demonstrates that, under the current contract structure, closed captioning is not economically feasible.

W Productions has sought other alternatives for captioning. They have sought assistance from the distributors of the shows and failed. Due to the nature of the programming, there are no additional sources of funding they may draw from to offset the cost of the programming. They also are not able to absorb the cost necessary to purchase the equipment on their own. The company generated profits last year of \$25,252.00 on gross receipts of \$120,401.00. That profit was the only income received by the owner for his full time employment in the company. They currently have no cash reserves.

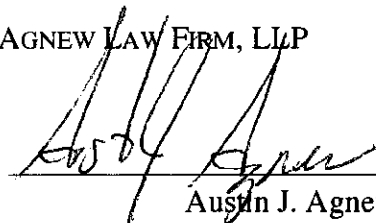
W Productions acknowledges the need to caption as much programming possible up to 2% of gross revenue and they will comply with the law. They also recognize that this petition serves as a temporary remedy that will allow them time to review their contracts and expenses in the hopes of creating a business model that would allow full captioning. However, they simply are not able to fully comply at this time.

If any additional information is necessary to determine the applicability of the exception, please contact our office and we will respond as quickly as possible.

Sincerely,

THE AGNEW LAW FIRM, LLP

By:

  
Austin J. Agnew

AJA:ms  
Enclosures

## Affidavit

THE STATE OF TEXAS     §

COUNTY OF Lubbock     §

BEFORE ME, the undersigned authority, on this day appeared **Charlie Whisner**, personally known to me, who upon being first duly sworn, upon his oath testifies as follows:

“My name is **Charlie Whisner**. I am over the age of eighteen years, am of sound mind, and am fully competent to testify to the matters contained herein.

“The statements made herein are made on personal knowledge, and the statements made herein are true and correct.

“W Productions is a Lubbock based company producing television shows of local interest. They are located at 2610 Salem Ave, Lubbock, Texas 79401.

“W Productions is the producer of three separate television shows and the owner of one, as described below:

“ ‘**Good Business with Charlie Whisner**’ is owned and produced by W Productions. The thirty minute show airs once weekly on KLBK, once on UPN, and is then run 15 times on Cox Cable on channels 9 and 78, the local programming channels. Each month two versions of each of the five episodes of the show are produced. Good Business showcases small and locally owned businesses;

“ ‘**At Home With Westmark**’ is a thirty minute show that airs once on KLBK and then 34 times per week on the Cox Cable local access channels. Each episode produced has two versions. ‘**At Home With Westmark**’ is a real estate show that features 25-35 homes for sale in the community. W Productions only produces the show and has no involvement after production ends;

“ ‘**The Coldwell Banker Show**’ is a thirty minute show airing once on KLBK and then airs 27 times per week on the Cox Cable local access station. It is a real estate show featuring 12-14 homes per week. There are four versions of this show produced. Like ‘**At Home With Westmark**’, W Productions has no involvement after production ceases.

“Each of these programs are placed on the air through the purchase of air time from the individual outlets. No sums are paid to the owners for the airing of the

programs. All revenue of W Productions is from production. **'At Home With Westmark'** and **'The Coldwell Banker Show'** are fee based. **'Good Business with Charlie Whisner'** is compensated for the featuring of the profiled businesses. No revenue is received from the channels airing the programming.

"The best quote available for the captioning service is \$125.00 per half hour. (After exploring the possibility of purchasing a machine to do their own transcription, it was rejected as infeasible.)

"Gross revenue for the production of the **'The Coldwell Banker Show'** is \$443.00 per episode. Last year it grossed \$23,040.00. The cost to caption each show would be \$125.00 per version, as there are four versions made, costs would exceed \$500.00 per episode. To caption the program would amount to \$26,000.00 per year.

"Gross revenue for the production of **'At Home With Westmark'** is \$600.00 per episode. Gross revenue off of this program last year was \$31,200.00. The cost to caption each episode is \$250.00 per episode. Captioning all the shows this year would cost \$13,000.00.


"**'Good Business with Charlie Whisner'** has yet to finish its first year of production. In the last four months of 2005, it grossed a total of \$23,457.00. The cost to caption the show in each episode is \$250.00. Captioning all the **'Good Business with Charlie Whisner'** shows projected this year would cost \$13,000.00.

"W Productions has sought other alternatives for captioning. They have sought assistance from the distributors of the shows and failed.

"Due to the nature of the programming there are no additional sources of funding they may draw from to offset the cost of the programming. They also are not able to absorb the cost necessary to purchase the equipment on their own.

"The company generated profits last year of \$25,252.00 on gross receipts of \$120,401.00. That profit is the only income received by me for my full time employment in the company.

"They currently have no cash reserves."

  
\_\_\_\_\_  
Charlie Whisner

STATE OF TEXAS           §

COUNTY OF Lubbock       §

SUBSCRIBED AND SWORN TO BEFORE ME by the said **Charlie Whisner**,  
on this the 29th day of December 2005, to certify which witness my hand and seal of  
office.



Kay B. Agnew  
NOTARY PUBLIC, State of Texas

**SCHEDULE C**  
**(Form 1040)**

**Profit or Loss From Business**

(Sole Proprietorship)

OMB No. 1545-0074

**2004**

Attachment  
Sequence No. **09**

Department of the Treasury  
Internal Revenue Service

► Partnerships, joint ventures, etc., must file Form 1065 or 1065-B.  
► Attach to Form 1040 or 1041. ► See Instructions for Schedule C (Form 1040).

|   |  |  |
|---|--|--|
| Name of proprietor<br><b>CHARLES L. WHISNER, JR.</b>  |  | Social security number (SSN)<br>[REDACTED]             |
| A Principal business or profession, including product or service (see page C-2 of the instructions)<br><b>Videography and Editing</b>   |  | B Enter code from pages C-7, 8, & 9<br>► <b>541920</b> |
| C Business name. If no separate business name, leave blank.   |  | D Employer ID number (EIN), if any                     |
| W Productions   |  |  |
| E Business address (including suite or room no.) ► <b>5402 80th St</b><br>City, town or post office, state, and ZIP code <b>Lubbock, Texas 79424</b>  |  |  |
| F Accounting method: (1) <input checked="" type="checkbox"/> Cash (2) <input type="checkbox"/> Accrual (3) <input type="checkbox"/> Other (specify) ►   |  |  |
| G Did you "materially participate" in the operation of this business during 2004? If "No," see page C-3 for limit on losses <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |  |  |
| H If you started or acquired this business during 2004, check here <input type="checkbox"/>   |  |  |

**Part I Income**

|   |   |         |  |
|---|---|---------|--|
| 1 Gross receipts or sales. <b>Caution.</b> If this income was reported to you on Form W-2 and the "Statutory employee" box on that form was checked, see page C-3 and check here <input type="checkbox"/> | 1 | 120,401 |  |
| 2 Returns and allowances  | 2 |         |  |
| 3 Subtract line 2 from line 1   | 3 | 120,401 |  |
| 4 Cost of goods sold (from line 42 on page 2)   | 4 | 0       |  |
| 5 Gross profit. Subtract line 4 from line 3   | 5 | 120,401 |  |
| 6 Other income, including Federal and state gasoline or fuel tax credit or refund (see page C-3)  | 6 | 0       |  |
| 7 Gross income. Add lines 5 and 6   | 7 | 120,401 |  |

**Part II Expenses.** Enter expenses for business use of your home **only** on line 30.

|  |     |        |  |     |         |  |
|--|-----|--------|--|-----|---------|--|
| 8 Advertising  | 8   | 28,736 | 19 Pension and profit-sharing plans                              | 19  |         |  |
| 9 Car and truck expenses (see page C-3)  | 9   | 1,344  | 20 Rent or lease (see page C-5):                                 |     |         |  |
| 10 Commissions and fees  | 10  | 104    | a Vehicles, machinery, and equipment                             | 20a | 0       |  |
| 11 Contract labor (see page C-4)   | 11  | 36,548 | b Other business property  | 20b | 0       |  |
| 12 Depletion   | 12  |        | 21 Repairs and maintenance                                       | 21  | 3,181   |  |
| 13 Depreciation and section 179 expense deduction (not included in Part III) (see page C-4)  | 13  | 15,129 | 22 Supplies (not included in Part III)                           | 22  | 924     |  |
| 14 Employee benefit programs (other than on line 19)   | 14  |        | 23 Taxes and licenses  | 23  | 0       |  |
| 15 Insurance (other than health)   | 15  |        | 24 Travel, meals, and entertainment:                             |     |         |  |
| 16 Interest:   |     |        | a Travel   | 24a | 224     |  |
| a Mortgage (paid to banks, etc.)   | 16a |        | b Meals and entertainment  |     | 1,227   |  |
| b Other  | 16b | 0      | c Enter nondeductible amount included on line 24b (see page C-5) |     | 50% 614 |  |
| 17 Legal and professional services   | 17  |        | d Subtract line 24c from line 24b                                | 24d | 613     |  |
| 18 Office expense  | 18  | 4,240  | 25 Utilities   | 25  | 2,147   |  |
| 28 Total expenses before expenses for business use of home. Add lines 8 through 27 in columns  | 28  |        | 26 Wages (less employment credits)                               | 26  | 0       |  |
| 29 Tentative profit (loss). Subtract line 28 from line 7   | 29  | 27,144 | 27 Other expenses (from line 48 on page 2)                       | 27  | 67      |  |
| 30 Expenses for business use of your home. Attach Form 8829  | 30  | 1,892  |  | 28  | 93,257  |  |
| 31 Net profit or (loss). Subtract line 30 from line 29.  |     |        |  | 29  | 27,144  |  |
| <ul style="list-style-type: none"> <li>• If a profit, enter on Form 1040, line 12, and also on Schedule SE, line 2 (statutory employees, see page C-6). Estates and trusts, enter on Form 1041, line 3.</li> <li>• If a loss, you must go to line 32.</li> </ul>                             |     |        |  | 30  | 1,892   |  |
| 32 If you have a loss, check the box that describes your investment in this activity (see page C-6).   |     |        |  | 31  | 25,252  |  |
| <ul style="list-style-type: none"> <li>• If you checked 32a, enter the loss on Form 1040, line 12, and also on Schedule SE, line 2 (statutory employees, see page C-6). Estates and trusts, enter on Form 1041, line 3.</li> <li>• If you checked 32b, you must attach Form 6198.</li> </ul> |     |        |  |     |         |  |

32a ☐ All investment is at risk.  
32b ☐ Some investment is not at risk.



December 29, 2005

Charlie Whisner  
W Productions  
Lubbock, TX  
Hand Delivered

Dear Charlie:

Thank you for your attention to the closed captioning matter. As per our conversation, our station would charge W Productions \$125 per half-hour program to insert a finished script onto a pre-recorded program for each half-hour program.

Again, you would need to deliver to us a finished script in an acceptable word processing document which we would then encode during a dubbing process. The final master would be a second generation copy as we do not have the technology to insert onto the original master tape.

If you have any additional questions please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'Greg McAlister', written over the printed name.

Greg McAlister  
VP & General Manager KLBK TV